



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2014-0342; FRL-9921-64-Region 3]

Approval and Promulgation of Implementation Plans; Pennsylvania; Pennsylvania Regional Haze State Implementation Plan Revision: Sulfur Dioxide and Nitrogen Oxide Best Available Retrofit Technology Limits for the Cheswick Power Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing limited approval and limited disapproval of a revision to the Pennsylvania State Implementation Plan (SIP) submitted by the Commonwealth of Pennsylvania through the Pennsylvania Department of Environmental Protection (PADEP). This SIP revision addresses the sulfur dioxide (SO₂) and nitrogen oxide (NO_x) Best Available Retrofit Technology (BART) requirements for Boiler Number 1 of the Cheswick Generating Station (Cheswick) in Allegheny County. EPA is proposing a limited approval of the SIP revision for Cheswick's SO₂ and NO_x BART requirements on the basis that the revision corrects an error in the SIP and strengthens the Pennsylvania SIP, while EPA is also proposing a limited disapproval of this part of the SIP revision because the SIP revision relies on the Clean Air Interstate Rule (CAIR) and not the Cross-State Air Pollution Rule (CSAPR) which has replaced CAIR. EPA is proposing limited approval and limited disapproval of the Pennsylvania SIP revision addressing the SO₂ and NO_x BART requirements in accordance with the requirements of the Clean Air Act (CAA) and EPA's rules for BART.

DATES: Comments must be received on or before [insert 30 days from the date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2014-0342, by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. E-mail: fernandez.cristina@epa.gov.
- C. Mail: EPA-R03-OAR-2014-0342, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2014-0342. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means

EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

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SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

II. Summary of SIP Revision

III. EPA's Analysis of SIP Revision

IV. EPA's Analysis of 110(l)

V. EPA's Proposed Action

VI. Statutory and Executive Order Reviews

I. Background

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles (*e.g.*, sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (*e.g.*, SO₂, NO_x, and in some cases, ammonia (NH₃) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter (PM_{2.5}), which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. Section 169A of the CAA establishes as a national goal the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution" and requires SIPs for states whose emissions may reasonably be anticipated to cause or contribute to visibility impairment in Class I areas to contain emission limits, compliance schedules and other

measures as may be necessary to make reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas.¹ A regional haze SIP generally must include, among other measures, source-specific BART emission limits for each source subject to BART. A detailed discussion of the requirements of the regional haze program can be found in our earlier notice proposing action on Pennsylvania's regional haze SIP. *See* 77 FR 3984 (January 26, 2012).

Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART. 40 CFR 51.308(e)(2). EPA made such a demonstration for the CAIR.² 70 FR 39104 (July 6, 2005). EPA's regulations provided that states participating in the CAIR cap and trade program under 40 CFR part 96 pursuant to an EPA-approved CAIR SIP or which remain subject to the CAIR Federal Implementation Plan (FIP) in 40 CFR part 97, do not require affected BART eligible electric generating units (EGUs) to install, operate, and maintain BART for emissions of SO₂ and NO_x. *See* 40 CFR 51.308(e)(4). EPA subsequently determined that the trading programs in the CSAPR, which was promulgated to replace CAIR, would achieve greater reasonable progress

¹ EPA's regulations implementing CAA section 169A are located at 40 CFR 51.308 and require states to establish long-term strategies for making reasonable progress toward meeting the national goal in CAA section 169A.

² CAIR required certain states like Pennsylvania to reduce emissions of SO₂ and NO_x that significantly contribute to downwind nonattainment of the 1997 NAAQS for PM_{2.5} and ozone. *See* 70 FR 25162 (May 12, 2005). CAIR was later found to be inconsistent with the requirements of the CAA and the rule was remanded to EPA. *See North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008). The court left CAIR in place until replaced by EPA with a rule consistent with its opinion. *Id.*

towards the national goal than would BART and could also serve as an alternative to source-by-source BART. *See* 77 FR 33641 (June 7, 2012).³

On December 20, 2010, PADEP submitted revisions to the Pennsylvania SIP to address regional haze as required by the CAA and 40 CFR 51.308. At the time of the development and submission of Pennsylvania's December 20, 2010 regional haze SIP submission, EPA had not yet promulgated CSAPR to replace CAIR. On July 13, 2012, EPA finalized a limited approval of the Pennsylvania regional haze SIP. 77 FR 41279. Our approval was limited due to Pennsylvania's reliance upon CAIR for certain regional haze requirements including BART for EGUs. On June 7, 2012, EPA had also finalized the limited disapproval of Pennsylvania's regional haze SIP (and other states' regional haze SIPs that relied similarly on CAIR) due to its reliance on CAIR as EPA had issued the CSAPR to replace CAIR at that time. 77 FR 33641. On June 7, 2012, EPA also finalized a limited FIP for Pennsylvania and other states, which merely substituted reliance on EPA's more recent CSAPR NO_x and SO₂ trading programs for EGUs for the SIP's reliance on CAIR.⁴ *See* 77 FR 33641.

³ CSAPR was proposed by EPA to replace CAIR and to help states reduce air pollution and attain CAA standards. *See* 75 FR 45210 (August 2, 2010) (proposal) and 76 FR 48208 (August 8, 2011) (final rule). The United States Court of Appeals for the D.C. Circuit issued a decision in *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), vacating CSAPR and keeping CAIR in place pending the promulgation of a valid replacement rule. Subsequently, on April 29, 2014, the United States Supreme Court reversed the August 21, 2012 opinion of the D. C. Circuit which had vacated CSAPR and remanded the matter to the D.C. Circuit for further proceedings. *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). After the Supreme Court's decision, EPA filed a motion to lift the stay of CSAPR and asked the D.C. Circuit to toll CSAPR's compliance deadlines by three years, so that the Phase 1 emissions budgets apply in 2015 and 2016 (instead of 2012 and 2013), and the Phase 2 emissions budgets apply in 2017 and beyond (instead of 2014 and beyond). On October 23, 2014, the D.C. Circuit granted EPA's motion and lifted the stay on CSAPR. *EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (D.C. Cir. Oct. 23, 2014), Order at 3. EPA views the D.C. Circuit's October 23, 2014 Order as also granting EPA's request to toll CSAPR's compliance deadlines and will therefore commence implementation of CSAPR on January 1, 2015. 79 FR 71663 (Dec. 3, 2014) (interim final rule revising CSAPR compliance deadlines).

⁴ In response to a petition for review of EPA's limited approval of the Pennsylvania regional haze SIP in the United States Court of Appeals for the Third Circuit, EPA successfully moved for a voluntary remand without vacatur. On

For the December 20, 2010 regional haze SIP, the Allegheny County Health Department (ACHD) had performed a BART analysis for Cheswick, a Pennsylvania EGU. In the May 4, 2009 Cheswick BART review memo, ACHD stated it performed its BART analysis in accordance with 40 CFR 51.308(e) and 40 CFR Part 51, Appendix Y, Guidelines for BART Determinations Under the Regional Haze Rule (BART Guidelines).⁵ The May 4, 2009 Cheswick BART review memo was included in Pennsylvania's December 20, 2010 regional haze SIP (in Appendix J) and specifically stated that SO₂ and NO_x limits were not considered in the memo since the source was participating in CAIR. The May 4, 2009 BART Review Memo for Cheswick and the December 20, 2010 regional haze SIP submission also contained an error concerning the recommended particulate matter (PM) BART for Cheswick. EPA has proposed to correct that error in a separate rulemaking and is not taking public comment on Cheswick's revised PM BART in this action. *See* 79 FR 64539 (October 30, 2014).⁶

The December 20, 2010 regional haze SIP submission explicitly provided that BART for Pennsylvania EGUs was participation in CAIR; however, the SIP submission incorrectly identified SO₂ and NO_x BART emission limits for Cheswick in error.⁷ After EPA proposed limited approval of the Pennsylvania regional haze SIP on January 26, 2012 (77 FR 3984), the owner of

April 30, 2014, EPA reissued its final limited approval of the Pennsylvania SIP to implement the Commonwealth's regional haze program for the first planning period through 2018. 79 FR 24340.

⁵ The BART Guidelines provide a process for making BART determinations that states and local agencies can use in implementing the regional haze BART requirements on a source-by-source basis, as provided in 40 CFR 51.308(e)(1).

⁶ Detailed information regarding EPA's rationale for proposing to correct the PM BART for Cheswick is available at 79 FR 64539.

⁷ The December 20, 2010 regional haze SIP submission included the following BART emission limits for Cheswick: 67,452 tons per year (tpy) of SO₂, 10,840 tpy of NO_x, and 361 tpy of coarse PM (PM₁₀). According to Pennsylvania and explained in its March 25, 2014 SIP submittal, these emission limits were included in error. The May 4, 2009 Cheswick BART review memo identified the 67,452 tpy of SO₂ and 10,840 tpy of NO_x as Cheswick's *potential to emit* SO₂ and NO_x.

Cheswick commented that Cheswick's BART emission limits proposed by PADEP were in error including the SO₂ and NO_x limits because PADEP had intended to rely on CAIR for SO₂ and NO_x BART limits for EGUs.⁸

II. Summary of SIP Revision

On March 25, 2014, the Commonwealth of Pennsylvania through PADEP submitted a SIP revision to revise the incorrect PM BART emission limit for Cheswick's Boiler No. 1 and to remove the errant inclusion of the SO₂ emission limit of 67,452 tons per year (tpy) and the NO_x emission limit of 10,840 tpy for Cheswick's Boiler No. 1 from the regional haze SIP because Pennsylvania intended CAIR as SO₂ and NO_x BART for all EGUs including Cheswick.⁹ PADEP submitted this SIP revision in accordance with the visibility and regional haze provisions of Sections 169A and 169B of the CAA and the regional haze rule at 40 CFR 51.308.¹⁰

PADEP stated in its submittal that the SO₂ and NO_x BART emission limits for Cheswick were included in the BART table in its December 10, 2010 regional haze SIP in conflict with the ACHD Cheswick BART review memo and the narrative portion of the December 20, 2010 SIP submittal which discussed CAIR as satisfying SO₂ and NO_x BART for BART-eligible EGUs in Pennsylvania. In the March 25, 2014 SIP revision submittal, PADEP stated the SO₂ and NO_x

⁸ The comments from the owner of Cheswick on the proposed Cheswick BART are available in the rulemaking docket from our approval of the Pennsylvania regional haze SIP, docket number EPA-R03-OAR-2012-0002, at www.regulations.gov.

⁹ As stated previously, EPA has proposed to approve the revision to Cheswick's PM BART emission limit in a separate rulemaking. *See* 79 FR 64539.

¹⁰ The March 25, 2014 SIP revision also updates the owner's name of Cheswick from Orion Power to GenOn Power Midwest LP and updates the permit numbers and dates of issuance for Cheswick's Boiler No. 1. However, the present owner of Cheswick is now NRG Energy.

BART emission limits for Cheswick were included in error. The analysis included in the December 20, 2010 regional haze SIP relied upon all Pennsylvania EGUs complying with CAIR for BART for SO₂ and NO_x. Therefore, PADEP concluded that the removal of the limits included in the December 20, 2010 regional haze SIP in error will not interfere with visibility improvement, with Pennsylvania's reasonable progress to achieving natural visibility conditions as required by the CAA, nor with any applicable requirement under the CAA.

ACHD had updated the BART analysis for Boiler No. 1 at Cheswick with a new memo on November 7, 2012 which retained the recommendation of CAIR as SO₂ and NO_x BART for Cheswick and recommended a new PM BART emissions limit. The November 7, 2012 BART review memo explained that Cheswick has stringent pollution controls installed including flue gas desulfurization (FGD) for SO₂ control, selective catalytic reduction (SCR) for NO_x control, and an electrostatic precipitator (ESP) for PM control. The November 7, 2012 BART review memo also indicated that two separate modeling studies show that visibility impacts from Cheswick are minimal.

III. EPA's Analysis of SIP Revision

EPA proposes a limited approval to the March 25, 2014 SIP revision to the Cheswick SO₂ and NO_x BART limits included in the Pennsylvania regional haze SIP because the removal of the specific SO₂ and NO_x emission limits corrects an error in the regional haze SIP and strengthens the Pennsylvania SIP overall through replacing the incorrect BART limits with an emission trading program which should reduce SO₂ and NO_x emissions more than the limits approved in

the regional haze SIP in error.¹¹ EPA proposes a limited disapproval to the portion of the SIP revision addressing SO₂ and NO_x BART for Cheswick because the revision relies on replacing the specific SO₂ and NO_x limits with CAIR which the D.C. Circuit remanded to EPA and which EPA replaced with CSAPR. Although certain issues regarding CSAPR remain for resolution in the D.C. Circuit, the D.C. Circuit has lifted the stay on CSAPR which will enable EPA to commence forthwith the implementation of CSAPR to replace CAIR as the emissions trading program for SO₂ and NO_x for EGUs in certain states including Pennsylvania. *See EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (D.C. Cir. Oct. 23, 2014), Order at 3.

For Cheswick's SO₂ and NO_x BART requirements, EPA finds Pennsylvania intended in its December 20, 2010 regional haze SIP to rely on CAIR as an alternative to source-specific BART emission limits for EGUs for SO₂ and NO_x. In its December 20, 2010 regional haze SIP submission, PADEP clearly explained that BART determinations for EGUs were conducted for PM emissions only because BART-eligible EGUs located in Pennsylvania are subject to the Federal CAIR program for SO₂ and NO_x. *See* Section 8.2 "EGUs and CAIR" in Pennsylvania's December 20, 2010 regional haze SIP.¹² In addition, the May 4, 2009 and November 7, 2012 BART review memos by ACHD for Cheswick also clearly stated that EPA has determined that

¹¹ The SO₂ and NO_x BART emission limits recommended in error in the December 20, 2010 regional haze SIP submission by PADEP are Cheswick's potentials to emit SO₂ and NO_x. *See* the May 4, 2009 Cheswick BART review memo in Appendix J to the Pennsylvania December 20, 2010 regional haze SIP which is available in the rulemaking docket from our approval of the Pennsylvania regional haze SIP, docket number EPA-R03-OAR-2012-0002, at www.regulations.gov. CAIR and CSAPR set allowance numbers for emissions of SO₂ and NO_x from certain EGUs including Cheswick, reflecting emission reductions which would be below a source's potential to emit. *See* 70 FR 39104 (CAIR) and 76 FR 48208 (CSAPR).

¹² The December 20, 2010 Pennsylvania regional haze SIP submission is available in the EPA rulemaking docket for our approval of the Pennsylvania regional haze SIP, docket number EPA-R03-OAR-2012-0002, at www.regulations.gov.

BART requirements for EGUs covered by CAIR are satisfied by the CAIR requirements for NO_x and SO₂ so a BART engineering analysis was not required for these pollutants.¹³

EPA finds our prior approval of the source specific SO₂ and NO_x BART limits for Cheswick was in error. According to explicit statements in its December 20, 2010 SIP submittal, Pennsylvania clearly relied on CAIR as an alternative to SO₂ and NO_x BART emission limits for all EGUs in its regional haze SIP and therefore intended Cheswick, an EGU, to have CAIR for SO₂ and NO_x BART. Thus, EPA finds the SO₂ and NO_x BART limits for Cheswick were inadvertently included in the December 20, 2010 regional haze SIP submittal and therefore approved by EPA as part of the regional haze SIP in error.¹⁴ EPA finds no further analysis is needed for the removal of the specific SO₂ and NO_x BART emission limits at Cheswick's Boiler No. 1 and replacement with a Federally enforceable emissions trading program as BART for SO₂ and NO_x. *See* CAA section 110(k)(6) (providing EPA authority to correct SIPs when EPA finds an error). Pennsylvania's analysis and conclusions, including related modeling and technical support documents regarding its regional haze SIP containing sufficient limits and measures so as to not interfere with reasonable progress and visibility improvement generally and not to interfere with other states achieving their reasonable progress goals (RPGs) at Class I areas, specifically were based on Pennsylvania EGUs complying with CAIR for BART and other

¹³ The May 4, 2009 BART memo for Cheswick was included in Appendix J to the December 20, 2010 regional haze SIP, available in the EPA rulemaking docket for our approval of the Pennsylvania regional haze SIP, docket number EPA-R03-OAR-2012-0002, at www.regulations.gov. The November 7, 2012 BART memo for Cheswick is included with the March 25, 2014 regional haze SIP revision in the rulemaking docket for this action.

¹⁴ EPA believes the evidence discussed in Pennsylvania's March 25, 2014 SIP revision submittal and in this rulemaking clearly support that neither Pennsylvania nor ACHD intended to set source-specific BART emission limits for Cheswick for SO₂ or NO_x and that the inclusion of those limits in the regional haze SIP submittal and in EPA's limited approval of the regional haze SIP was inadvertent and in error.

regional haze requirements not relevant here.^{15,16} Thus, EPA proposes its limited approval of this SIP revision to remove the specific Cheswick SO₂ and NO_x BART limits in accordance with sections 110(k)(6) and 169A of the CAA because EPA determined the prior limited approval of the regional haze SIP was in error relating to Cheswick's BART limits for SO₂ and NO_x. EPA proposes a limited disapproval of this SIP revision for Cheswick's SO₂ and NO_x BART limits in accordance with section 169A of the CAA because Pennsylvania relied upon CAIR for SO₂ and NO_x BART for Cheswick (and all Pennsylvania EGUs) and CSAPR is replacing CAIR as the emissions trading program for SO₂ and NO_x. Upon final action on this limited disapproval, Cheswick will be subject to EPA's June 7, 2012 FIP which replaced CAIR with CSAPR as SO₂ and NO_x BART for Pennsylvania EGUs.

EPA's 2012 limited approval and disapproval of the Pennsylvania regional haze SIP was based on Pennsylvania EGUs having CAIR as an alternative to SO₂ and NO_x specific BART emission rates. EPA finds that Cheswick has installed controls for SO₂ and NO_x, including a FGD and SCR, to comply with CAIR and CSAPR which will limit emissions from Cheswick of visibility-impairing pollutants and minimize visibility impacts from the plant.¹⁷ EPA finds the removal of these source-specific limits and the replacement with CSAPR when implemented, will not interfere with visibility improvement or with any applicable requirement under the CAA,

¹⁵ PADEP concluded in its December 20, 2010 regional haze SIP that its long term strategy and BART determinations provide sufficient reductions to mitigate impacts of emissions from sources located in Pennsylvania on affected Class I areas. *See* Section 3.0 of the December 20, 2010 regional haze SIP.

¹⁶ As explained further in this proposed rulemaking, once CSAPR is implemented, EPA believes the reliance upon CAIR for SO₂ and NO_x BART at Cheswick, a Pennsylvania EGU, will be replaced by reliance upon CSAPR for SO₂ and NO_x BART through the June 7, 2012 FIP which replaced CSAPR for CAIR for all Pennsylvania EGU's SO₂ and NO_x BART.

¹⁷ According to the Cheswick BART review memos prepared by ACHD, Cheswick also installed a new, shorter stack with installation of its FGD and SCR.

particularly the visibility and regional haze provisions of sections 169A and 169B of the CAA and 40 CFR 51.308. EPA believes this removal and replacement with CSAPR strengthens the Pennsylvania SIP because EPA found CSAPR is “Better than BART” and provides greater reasonable progress towards natural visibility conditions than source-specific BART limits for EGUs. *See* 77 FR 33641.¹⁸

EPA does not believe that the status of CAIR or CSAPR limits EPA’s ability to propose the limited approval of this SIP revision for SO₂ and NO_x BART for Cheswick. In August 2011 after Pennsylvania had developed and submitted its regional haze SIP to EPA with its reliance upon CAIR, EPA replaced CAIR with CSAPR (76 FR 48208 (August 8, 2011)) to address issues raised in *North Carolina v. EPA* by the D.C. Circuit. *See* 531 F.3d 896 (D.C. Cir. 2008). CSAPR requires substantial reductions of SO₂ and NO_x emissions from EGUs in 28 states in the Eastern United States that significantly contribute to downwind nonattainment of the 1997 PM_{2.5} and ozone NAAQS and 2006 PM_{2.5} NAAQS. Implementation of the rule was scheduled to begin on January 1, 2012, when CSAPR’s cap-and-trade programs would have superseded the CAIR cap-and-trade programs. However, numerous parties filed petitions for review of CSAPR, and on December 30, 2011, the D.C. Circuit issued an order staying CSAPR pending resolution of the petitions and directing EPA to continue to administer CAIR. *EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (D.C. Cir. Dec. 30, 2011), Order at 2.

¹⁸ Before CAIR was remanded by the D.C. Circuit, EPA had found CAIR provides greater reasonable progress than source-specific BART, and the D.C. Circuit specifically upheld CAIR as an alternative to BART in accordance with the requirements of Section 169A of the CAA. *Utility Air Regulatory Group v. EPA*, 471 F.3d 1333, 1340 (D.C. Cir. 2006) (finding EPA’s conclusion that CAIR provides greater reasonable progress reasonable and citing 40 CFR 51.308(e)(4) and 70 FR 39104, 39136 (July 6, 2005)).

Nevertheless, on June 7, 2012, EPA issued a FIP for Pennsylvania, which substituted Pennsylvania's reliance on CAIR for SO₂ and NO_x BART for EGUs with CSAPR's NO_x and SO₂ trading programs for BART for the Pennsylvania EGUs as EPA expected CSAPR to replace CAIR pending the conclusion of litigation in the D.C. Circuit. *See* 77 FR 33641. Following EPA's actions for Pennsylvania's regional haze requirements, the D.C. Circuit issued a decision in *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), vacating CSAPR and ordering EPA to continue administering CAIR. On April 29, 2014, the United States Supreme Court reversed the D.C. Circuit's decision and remanded the matter, including CSAPR, to the D.C. Circuit for further proceedings in accordance with its ruling. *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). EPA had filed a motion to lift the stay on CSAPR in light of the Supreme Court's decision and also asked the D.C. Circuit to toll CSAPR's compliance deadlines by three years, so that the Phase 1 emissions budgets apply in 2015 and 2016 (instead of 2012 and 2013), and the Phase 2 emissions budgets apply in 2017 and beyond (instead of 2014 and beyond). On October 23, 2014, the D.C. Circuit granted EPA's motion to lift the stay on CSAPR. *EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (D.C. Cir. Oct. 23, 2014), Order at 3. EPA views the D.C. Circuit's October 23, 2014 Order as also granting EPA's request to toll CSAPR's compliance deadlines and will therefore commence implementation of CSAPR on January 1, 2015. 79 FR 71663 (December 3, 2014) (interim final rule revising CSAPR compliance deadlines). Therefore, the CAIR provisions will sunset on December 31, 2014 and be replaced by CSAPR. CSAPR will be implemented as a FIP by EPA, until such time as Pennsylvania adds the provisions of CSAPR to its SIP.¹⁹

¹⁹ CSAPR requires substantial reductions of SO₂ and NO_x emissions from EGUs in 28 states in the Eastern United States that significantly contribute to downwind nonattainment or interfere with maintenance of the 1997 PM_{2.5} and

EPA does not believe that the status of *EME Homer City*, or CAIR and CSAPR in particular, limits EPA's ability to propose action on this SIP revision to Cheswick's BART for SO₂ and NO_x limitations for several reasons. First, EPA will commence implementation of CSAPR forthwith, and Pennsylvania EGUs including Cheswick are subject to CSAPR pursuant to the CSAPR FIP (76 FR 48208) in general. Thus, EGUs in Pennsylvania, including Cheswick, will be subject to the Federally enforceable requirements of CSAPR upon its imminent implementation. Pursuant to the June 7, 2012 FIP for Pennsylvania for certain regional haze requirements, EGUs in the Commonwealth are subject to CSAPR as their BART requirement for SO₂ and NO_x. *See* 77 FR 33641. Nothing in EPA's June 7, 2012 FIP (77 FR 33641) excludes Cheswick, an EGU otherwise subject to Federal CSAPR requirements, from the June 7, 2012 FIP replacing Pennsylvania's reliance upon CAIR with reliance upon CSAPR for EGU BARTs. Therefore, upon final approval of this rulemaking proposing limited approval and limited disapproval of the March 25, 2014 SIP revision, Cheswick's SO₂ and NO_x BART limits will be subject to CSAPR like every other EGU in Pennsylvania. Because EPA determined CSAPR achieves greater reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas than source-specific BART in those states covered by CSAPR, EPA expects greater emissions reductions of SO₂ and NO_x from Pennsylvania EGUs subject to CSAPR than from Cheswick's prior limits or from CAIR. *See* 77 FR 33641 (concluding CSAPR was better than BART) and 76 FR 48208 (promulgating CSAPR).

ozone NAAQS and 2006 PM_{2.5} NAAQS.

EPA therefore proposes its limited approval and limited disapproval of this portion of the March 25, 2014 SIP revision addressing SO₂ and NO_x BART. CAA section 110(c)(1) provides that EPA must promulgate a FIP within two years after disapproving a SIP submission in whole or in part, unless EPA approves a SIP revision correcting the deficiencies within that two-year period. EPA believes our limited disapproval of the March 25, 2014 SIP submission does not result in any new FIP obligation for EPA because EPA already promulgated a FIP on June 7, 2012 to address the identified deficiency (replacing CAIR with CSAPR for SO₂ and NO_x BART for Pennsylvania EGUs), and thus that FIP fully addresses Cheswick's SO₂ and NO_x BART. Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of part D of title I of the CAA (CAA sections 171-193) or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP Call) starts a sanctions clock. Pennsylvania's March 25, 2014 SIP revision submittal for revising Cheswick's BART was not submitted to meet either of these requirements. Therefore, EPA's limited disapproval of Pennsylvania's SIP submission concerning Cheswick's SO₂ and NO_x BART does not trigger mandatory sanctions under CAA section 179.

In summary, EPA finds the SIP revision for the SO₂ and NO_x BART for Cheswick removes an error in the Pennsylvania SIP and strengthens the Pennsylvania SIP. EPA proposes a limited approval for the Cheswick SO₂ and NO_x BART SIP revision in accordance with sections 110(k)(6), 169A and 169B of the CAA. EPA proposes a limited disapproval because the SIP revision relies upon CAIR and not CSAPR for Cheswick's SO₂ and NO_x BART. However,

EPA finds Cheswick is subject to EPA's June 7, 2012 FIP which replaced CSAPR for CAIR for SO₂ and NO_x BART for Pennsylvania EGUs.

IV. EPA's Analysis of 110(l)

Section 110(l) of the CAA states that "[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of this chapter." EPA does not interpret section 110(l) to require a full attainment or maintenance demonstration before any changes to a SIP may be approved. Generally, a SIP revision may be approved under section 110(l) if the EPA finds that it will at least preserve status quo air quality, particularly where the pollutants at issue are those for which an area has not been designated nonattainment. EPA does not believe the proposed limited approval and limited disapproval of the SO₂ and NO_x BART emission limitations will interfere with the CAA requirements for BART or for preventing interference with other states' programs to protect visibility because this proposal is supported by an evaluation that those CAA requirements are met. This SIP revision will correct errors from PADEP in the BART limits determined for Cheswick and will replace BART emission limitations with limits intended by Pennsylvania which EPA finds reasonable. This SIP revision will not result in any substantive changes to other CAA requirements. Cheswick will continue to be subject to CAA requirements for BART.

The SIP revision replaces a prior determination that was in error for SO₂ and NO_x as Pennsylvania intended EGUs to have CAIR for SO₂ and NO_x BART. As discussed above, Pennsylvania's analysis supporting its regional haze SIP was based on EGUs having CAIR for

SO₂ and NO_x BART.²⁰ Thus, EPA does not anticipate the revisions to Cheswick's BARTs to interfere with neighboring states' ability to achieve RPGs given Cheswick's minimal visibility impact, Cheswick's SO₂, NO_x and PM controls and newer shorter stack, Cheswick's current compliance with CAIR, and recent monitored data from neighboring states showing progress towards RPGs.²¹

EPA also believes that approval of the submitted SIP revision will not interfere with attainment and maintenance of the NAAQS. Cheswick's previous SO₂ BART limit in the regional haze SIP was 67,452 tpy. Cheswick is not located in an area designated nonattainment for any SO₂ NAAQS, Cheswick's actual SO₂ emissions for 2012 and 2013 are well below the BART limit according to data from EPA's CAMD website,²² and Cheswick's SO₂ allowances through CAIR and now CSAPR, which is replacing CAIR, will be lower than the prior SO₂ BART established previously for Cheswick. In general, EPA expects CSAPR allowances for EGUs such as Cheswick to be less than the CAIR emission allowances.²³ As Cheswick has been subject to CAIR since 2009, EPA does not anticipate the BART revision for SO₂ to interfere with the 2010 SO₂ NAAQS in the area near Cheswick as Cheswick has been in compliance with CAIR and

²⁰ As discussed previously, EPA expects this SIP revision if finalized will replace Cheswick's specific SO₂ and NO_x BART emission limitations with reliance upon CSAPR for BART based on EPA's June 7, 2012 FIP for Pennsylvania EGU SO₂ and NO_x BARTs.

²¹ For further discussion of progress towards RPGs and current visibility conditions in nearby Federal Class I areas based on the latest available Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring data, see EPA's approvals of Virginia's and Delaware's five-year progress reports on regional haze at 79 FR 25019 (May 2, 2014) (Virginia) and 79 FR 25506 (May 5, 2014) (Delaware). *See also* 79 FR 10451 (February 25, 2014) (proposed approval of Virginia's progress report) and 79 FR 10442 (February 25, 2014) (proposed approval of Delaware's progress report). EPA's proposed approval of West Virginia's five-year progress report on regional haze is at 79 FR 14460 (March 14, 2014). EPA has reviewed Cheswick's compliance with CAIR through data at EPA's Clean Air Markets Division (CAMD) database at <http://www.epa.gov/airmarket/>.

²² Cheswick's emissions data is available at EPA's CAMD database at <http://www.epa.gov/airmarket/>. EPA has reviewed preliminary SO₂ data for Cheswick for 2014 and finds it consistent with 2012-13 data and with CAIR requirements.

²³ For a discussion of CSAPR and CSAPR allowances as promulgated, see 76 FR 48208.

Cheswick's new BART limit replaces the facility's prior limit which was its potential to emit SO₂.

Cheswick's prior NO_x BART limit was 10,840 tpy. Cheswick is not located in an area designated nonattainment for the 2010 NO₂ NAAQS, but Cheswick is located in an area designated marginal nonattainment for the 2008 ozone NAAQS.²⁴ However, Cheswick's actual NO_x emissions for 2012 and 2013 are well below the prior BART limit according to data from EPA's CAMD website, and Cheswick's NO_x allowances through CAIR and CSAPR are also lower than the prior NO_x BART established previously for Cheswick. As stated previously, Cheswick has complied with CAIR since 2009. Therefore, EPA does not anticipate the NO_x BART revision for Cheswick will interfere with or delay Pennsylvania's ability to reach attainment in the Pittsburgh-Beaver Valley nonattainment area for the 2008 ozone NAAQS.²⁵

In addition, EPA does not anticipate any increase in emissions of SO₂ or NO_x from the submitted SIP revision which replaces prior BART limits set in error with CSAPR based on our review of Cheswick's recent emissions data indicating Cheswick has complied with CAIR requirements and because CSAPR should produce equivalent or greater reductions than CAIR.

²⁴ The Pittsburgh-Beaver Valley area was designated moderate nonattainment for the 1997 eight-hour ozone NAAQS. However, EPA found the Pittsburgh-Beaver Valley area attained the 1997 ozone NAAQS by its June 15, 2010 attainment date and also found previously that the area continued to attain the 1997 ozone NAAQS with monitored data from 2009-2011 and preliminary data for 2012. 78 FR 20244 (April 4, 2013). During this time, Cheswick operated with its CAIR requirements. Therefore, EPA does not find the SIP revision for Cheswick's NO_x BART will interfere with the Pittsburgh-Beaver Valley area's continued attainment and maintenance of the 1997 ozone NAAQS.

²⁵ EPA notes the preliminary 2012-2014 design value for the Pittsburgh-Beaver Valley nonattainment area shows improving ozone air quality and reflects the area's ozone air quality approaching attainment with the 2008 ozone NAAQS. The 2014 data is not complete, quality assured or certified at this time. During this time, Cheswick has been complying with CAIR. EPA has reviewed preliminary 2014 NO_x data for Cheswick and finds it consistent with 2012-13 data and with CAIR requirements.

EPA believes the limited approval and limited disapproval of Pennsylvania's revision will not contribute to conditions of nonattainment or interfere with maintenance of any standard. Thus, EPA finds this SIP revision to Cheswick's BARTs complies with section 110(l) of the CAA and will not interfere with any applicable requirements concerning attainment and reasonable further progress or any other applicable requirement of the CAA, such as the visibility and regional haze provisions of sections 169A and 169B of the CAA.

V. EPA's Proposed Action

EPA is proposing a limited approval of the portion of the Pennsylvania March 25, 2014 revision to its regional haze SIP which removes specific SO₂ and NO_x BART emission limitations for Cheswick set in error and is proposing a limited disapproval of the SIP revision due to its reliance upon CAIR which has been replaced with CSAPR. As EPA issued a FIP for SO₂ and NO_x BART emission limitations for EGUs in Pennsylvania which includes Cheswick, no further action by EPA would be required to address the limited disapproval if finalized. This conclusion is based on our review of the March 25, 2014 SIP revision as well as Pennsylvania's December 20, 2010 regional haze SIP submission including technical data and supporting analysis. Upon final action on this SIP revision, CSAPR for SO₂ and NO_x BART will supercede the previous SO₂ and NO_x BART determinations for Cheswick included in Pennsylvania's regional haze SIP as EPA will implement CSAPR beginning January 1, 2015.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule revising Pennsylvania's regional haze SIP pertaining to BART requirements for Cheswick does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 23, 2014.

William C. Early,
Acting Regional Administrator,
Region III.

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